

**REMARKS**

Claims 1-7, 9 and 10 are pending in this application. By this Amendment, claim 1 is amended. The amendment introduces no new matter. Claim 8 is canceled without prejudice to, or disclaimer of, the subject matter recited in that claim. Reconsideration of the application based on the above amendments and the following remarks is respectfully requested.

Entry of the amendments is proper under 37 CFR §1.116 since the amendments: (a) place the application in condition for allowance for the reasons discussed below; (b) do not raise any new issue requiring further search and/or consideration as the amendments amplify issues previously discussed throughout prosecution; and (c) place the application in better form for appeal, should an appeal be necessary. The amendments are necessary and were not earlier presented because they are made in response to arguments raised in the final rejection. Entry of the amendments is thus respectfully requested.

The Office Action, in paragraph 1, rejects claims 1-5 and 9-10 under 35 U.S.C. §103(a) as being unpatentable over JP-A-09-317452 (hereinafter "JP '452") in view of International Publication No. WO 94/13937 (hereinafter "WO '937"). The Office Action, in paragraph 2, rejects claims 1-6 and 9-10 under 35 U.S.C. §103(a) as being unpatentable over JP '452 in view of U.S. Patent No. 4,402,662 to Pfefferle or International Publication No. WO 99/64732 (hereinafter "WO '732"). The amendment of claim 1 to incorporate the subject matter of now canceled claim 8, which was not rejected over the above combinations of references, renders these rejections moot.

The Office Action, in paragraph 3, rejects claims 7 and 8 under 35 U.S.C. §103(a) as being unpatentable over JP '452 in view of Pfefferle or WO '732 and U.S. Patent No. 4,203,502 to Strader. This rejection is respectfully traversed.

The Office Action, in paragraph 3, concedes that JP '452, Pfefferle and WO '732, individually or in combination, do not teach groups of the cylinder-shaped supports are disposed out of phase, as previously recited in claim 8, as filed, now incorporated into claim 1. To cure this deficiency, the Office Action asserts that Strader teaches this feature. The Office Action summarily concludes that it would have been obvious to one of ordinary skill in the art to combine the alleged teachings of Strader with the other applied references to render obvious at least this feature. This assertion is incorrect for at least the following reasons.

Strader teaches a muffler for an internal combustion engine with exhaust chambers A, B and C housed within the tubular housing 11 (Abstract; col. 3, lines 36-66). Strader further teaches that within chambers A, B and C, gas transfer tubes 18 and 19, in chamber A, 20 and 21, in chambers A and B, 26 and 28, in chambers B and C, and 30 and 32, in chamber C, are located (Figs. 2-7; col. 3, line 67 - col. 6, line 26).

With reference to Figs. 2-6, the Office Action asserts that Strader teaches a plurality of gas conduit groups that can reasonably be considered to be disposed out of phase. A close examination of Figs. 2-6 of Strader and the relevant portions of the Strader disclosure, however, indicates that the position of the chambers A, B and C in the peripheral direction are in phase. For example, chambers A, B and C are disposed coaxially at predetermined intervals in the axial direction. Within each chamber, Strader teaches that the gas tubes are arranged in a side-by-side relationship and in parallel alignment to assume a triangular relationship in each chamber (col. 6, lines 27-33). With reference to Fig. 7 of Strader, this parallel alignment is clearly evident. As seen in Fig. 7, Strader relies on such alignment to permit gas flow from chamber to chamber (see col. 6, lines 4-26). Even though Strader teaches that flow stops and is redirected in each chamber, Strader still teaches that, where

flow between chambers occurs, it occurs by the parallel side-by-side relationship of corresponding gas tubes (see Fig. 7; col. 4, lines 51-58).

In contrast, as seen in Fig. 3 of this application, the subject matter of pending claim 1 recites, among other features, groups of the cylinder-shaped supports are disposed out of phase. Applicants provide further clarification of this point in the specification, in which Applicants indicate that the three sets of cylinder-shaped supports were disposed in a staggered manner in the axial direction (paragraph [0053]). As such, it is unreasonable to assert that the applied references and Strader, individually or in combination, can reasonably be considered to have suggested at least this feature.

For at least the reasons discussed above, none of the applied references, individually or in combination, teach, nor can they reasonably be considered to have suggested, at least the combination of all the features recited in pending claim 1. Additionally, claims 2-7, 9 and 10 are not taught, nor would they have been suggested, by the applied references for at least the respective dependence of these claims, directly or indirectly, on an allowable base claim, as well as for the separately patentable subject matter that each of these claims recites.

Accordingly, reconsideration and withdrawal of the rejections of claims 1-7, 9 and 10 under 35 U.S.C. §103(a) as being unpatentable over the applied references are respectfully requested.

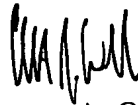
The Office Action, on page 6, provisionally rejects claims 1-10 under the doctrine of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2 and 5-11 of co-pending U.S. Patent Application No. 10/656,178. The Office Action, on pages 7 and 8, continues to assert that the terms recited in the pending claims are synonymous with the terms recited in claims 1, 2 and 5-11 of 10/656,178. Applicants note that 10/656,178 and the instant application were both filed on September 8, 2003. MPEP §804 states "If both applications are filed on the same day, the Examiner should determine which application

claims the base invention and which application claims the improvement (added limitations). The obviousness double patenting type rejection in the base application can be withdrawn without a Terminal Disclaimer, while the obviousness type-double patenting rejection in the improving application cannot be withdrawn without a Terminal Disclaimer." Without conceding the propriety of this provisional rejection, Applicants assert that the subject matter of the pending claims recite the base invention. As such, Applicants respectfully request withdrawal of the provisional nonstatutory obviousness-type double patenting rejection.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-7, 9 and 10 are earnestly solicited

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number set forth below.

Respectfully submitted,



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JAO:CJW/tbm

Attachment:  
Petition for Extension of Time

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